

Discussed – June 18, 2019  
Public Hearing – July 9, 2019  
Introduced – June 18, 2019 – Commissioners Windon and Harrod  
Adopted -  
Effective -

### **ORDINANCE NO. 503**

**AN ORDINANCE TO AMEND CHAPTER 340 (ZONING) OF THE CODE OF THE TOWN OF ST. MICHAELS ENTITLED “SMALL WIRELESS FACILITIES” FOR THE PURPOSE OF ALLOWING SMALL WIRELESS FACILITIES AS A SPECIAL EXCEPTION WITH CONDITIONS IN ALL ZONING DISTRICTS AND DEFINING TERMS ASSOCIATED THEREWITH; PROVIDING THAT THE TITLE OF THIS SUMMARY SHALL BE DEEMED A FAIR SUMMARY AND GENERALLY RELATING TO SMALL WIRELESS FACILITIES IN THE TOWN OF ST. MICHAELS.**

**WHEREAS**, pursuant to Md. Code Ann., Local Gov’t § 5-202 and § C-19(A) of the Charter of the Town of St. Michaels, the Commissioners of St. Michaels (the “Commissioners”) are authorized and empowered to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as they may deem necessary for the good government of the Town of St. Michaels (the “Town”); for the protection and preservation of the City's property, rights, and privileges; for the preservation of peace and good order; to secure persons and property from violence, danger, or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of and visitors in the Town; and

**WHEREAS**, pursuant to Md. Code Ann., Local Gov’t § 5-205(d)(1)(i) and § C-19(B)(23) of the Charter, the Commissioners are authorized and empowered to establish and collect reasonable fees and charges for franchises, permits, or licenses granted by the Town and to grant and regulate franchises; and

**WHEREAS**, the Town’s sidewalks and public ways contain a finite amount of space; therefore, they cannot safely and responsibly accommodate the installation of an unlimited amount of utility and communications facilities and infrastructure; and

**WHEREAS**, the Commissioners have a legitimate interest in ensuring that third parties proposing to install, construct, and maintain such facilities and infrastructure in, upon, or over the City’s sidewalks and public ways do so responsibly, without interfering with existing facilities and infrastructure, without imposing a burden or safety risk upon pedestrian or vehicular traffic, without a substantially detrimental impact on abutting properties, and without imposing a burden on the Town and its taxpayers for the costs of restoration of disturbed areas; and

**WHEREAS**, pursuant to federal law, including, but not limited to Sections 253 and 332 of the Communications Act (47 U.S.C. §§ 253 and 332), local governments are authorized to control the placement, construction, and modification of personal/small wireless facilities and manage the use of public rights-of-way and may require fair and reasonable compensation for such use, but may not prohibit any entity's ability to provide personal wireless service or other telecommunications service or unreasonably discriminate among providers of functionally equivalent services; and

**WHEREAS**, the Commissioners desire to accommodate the safe, non-burdensome, and efficient deployment of small wireless facilities and support structures in, upon, and over the Town's sidewalks and public ways in compliance with federal, State, and local law; and

**WHEREAS**, following a public hearing held on \_\_\_\_\_, 2019, the St. Michaels Planning Commission (the "Planning Commission") recommended that the Commissioners approve a text amendment amending Chapter 340 (Zoning) of the Code of the Town of St. Michaels (the "Town Code") for the purpose of allowing small wireless facilities as a special exception with conditions in all zoning districts and defining terms associated therewith; and

**WHEREAS**, on \_\_\_\_\_, 2019, the Commissioners held a public hearing, notice of which was published in the Star Democrat, a newspaper of general circulation in the Town, on \_\_\_\_\_, 2019 and \_\_\_\_\_, 2019 in accordance with Md. Code Ann., Land Use § 4-203(b) and § 340-90 of the Town Code; and

**WHEREAS**, having considered the recommendations of the Planning Commission and Staff, as well as the comments made during the \_\_\_\_\_, 2019 public hearing, the Commissioners are desirous of amending Chapter 340 (Zoning) of the Town Code for the purpose of allowing small wireless facilities as a special exception with conditions in all zoning districts and defining terms associated therewith; and

**WHEREAS**, the Commissioners deem it in the interest of the public health, welfare, and safety of the citizens of the Town, and for the good government of the Town, to enact this Ordinance and to take the actions as described herein.

**SECTION 1. NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS** that Chapter 340 (Zoning) of the Code of the Town of St. Michaels is hereby amended as follows:

## **§ 340-108 Definitions.**

In this chapter, the following terms are used according to stipulated definitions. For most of these terms, the definition is stipulated with the term in the list below. For some of these terms, the definition is stipulated elsewhere in this chapter, at a location indicated in the list below by a reference, after the term, in the form “For definition see § \_\_\_\_\_ of this chapter.”

**Small wireless facility – “Small cells,” which are low-powered wireless base stations that function like traditional cell sites in a mobile wireless network but typically cover targeted indoor or localized outdoor areas; “DAS” or “distributed antenna systems,” which use numerous antennae, commonly known as “nodes,” similar in size to small cells and are connected to and controlled by a central hub; and other similar facilities, systems or devices designed to facilitate a mobile wireless network within a localized area and to be attached to a support structure within sidewalks or streets or on private property.**

**Support structure – Any light pole, utility pole, building wall, rooftop, or other structure upon which a small wireless facility is attached.**

**SECTION 2.** AND BE IT FURTHER ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that Chapter 340 (Zoning), Attachment 6 of the Code of the Town of St. Michaels is hereby amended as follows:

### **ZONING**

#### ***340 Attachment 6***

#### **Town of St. Michaels**

#### **Notes to Table of General Land Uses**

**Small wireless facilities. See § 340-108 of the Town Code for definitions relating to small wireless facilities and support structures. Subject to the following terms and conditions, small wireless facilities shall be permitted with a special exception in all zoning districts:**

**(1) An applicant desiring to install a small wireless facility in, upon, or over private property shall provide the following information:**

**(a) A technical description of the small wireless facility and support structure along with detailed diagrams accurately depicting all components and equipment;**

**(b) A detailed description of the design, location, and installation timeframe for the small wireless facility and any support structure;**

**(c) An engineering certification;**

- (d) A statement describing the applicant's intentions with respect to collocation, if applicable, with collocation being preferred and more favorably viewed;
  - (e) A statement demonstrating the applicant's ability to comply with all applicable safety standards;
  - (f) If the applicant is not the owner of the subject property, an executed attachment agreement with the property owner;
  - (g) A decommissioning plan; and
  - (h) Such other information as the Planning Commission and/or Board of Appeals may require.
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- (2) All small wireless facilities shall be located, designed, and operated in accordance with all applicable local, State, and federal laws and regulations and to minimize visual impact on surrounding properties to the maximum extent practicable and shall otherwise comply with such requirements and conditions as the Planning Commission and/or Board of Appeals may deem appropriate to impose.
  - (3) Small wireless facilities shall not be located in an area where there is an over-concentration of small wireless facilities.
  - (4) The location selected and the scale and appearance of the small wireless facility shall be consistent with the general character of the neighborhood.
  - (5) Small wireless facilities located in a residential zoning district shall not generate any noise.
  - (6) If located in the Historic District, the small wireless facility shall be subject to Historic District Commission review and approval.
  - (7) Support structures shall comply with the building setback provisions of the applicable zoning district. In addition, the minimum setback distance from the ground base of any new support structure to any property line, sidewalk, street, or public recreational area shall be the height of the support structure, including any antennae or other appurtenances. This setback is considered a "fall zone."
  - (8) The height of any new support structure, including any antennae or other appurtenances, shall not exceed the average height of the existing street light poles or utility poles within the area extending five hundred (500) feet in any direction from the proposed support structure.
  - (9) A small wireless facility and/or support structure shall be lighted only if required by the Federal Aviation Administration. Lighting of equipment shelters and other facilities on site shall be shielded from other properties.

- (10) If metal, the support structure must be treated or painted with non-reflective paint and in a way to conform to or blend in with the surroundings.**
- (11) The small wireless facility and support structure shall be used continuously for wireless communications. In the event the small wireless facility and support structure cease to be so used for a period of six (6) months, the Board of Appeals may revoke any Special Exception approval granted pursuant to this section. The individual or entity to whom such approval has been granted shall be responsible for removing the small wireless facility and any support structure within forty-five (45) days following such revocation. Any portion of the small wireless facility and/or support structure which has not been removed within forty-five (45) days following such revocation shall be considered abandoned and may be removed and disposed of by the City, with all such costs to be the sole responsibility of the individual or entity to whom the special exception was granted.**
- (12) In addition to the other criteria required for special exceptions, the Planning Commission shall not provide a favorable recommendation for, and the Board of Appeals shall not approve, an application for a small wireless facility when, in its sole judgment, sufficient capacity no longer exists for additional small wireless facilities to be placed in the proposed location without jeopardizing the physical integrity of other small wireless facilities, support structures, or other utilities already present in the proposed location.**

**SECTION 3.** AND BE IT FURTHER ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that Chapter 340 (Zoning), Attachment 5 of the Code of the Town of St. Michaels is hereby amended to allow small wireless facilities as permitted with a special exception in all zoning districts as shown on Exhibit 1 hereto, which is incorporated by reference as if fully set forth herein.

**SECTION 4.** The recitals to this Ordinance are incorporated herein and deemed a substantive part of this Ordinance.

**SECTION 5.** In this Ordinance, unless a section of the Town Code is expressly repealed in its entirety and reenacted, new or added language is underlined and in boldface type, and deleted text is crossed out with a single strikethrough. With respect to the substantive provisions of this Ordinance set forth in Sections 1 and 2, language added after the date of introduction is in bold, italicized font and language deleted after the date of introduction is crossed out with a double strikethrough.

**SECTION 6.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and

such holding shall not affect the validity of the remaining portions of this Ordinance, it being the intent of the Commissioners of St. Michaels that this Ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

**SECTION 7.** All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 8.** The title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

**SECTION 9.** This Ordinance shall take effect twenty (20) days from the date of its enactment, having been read at two (2) meetings of the Commissioners of St. Michaels and having been passed by a ye and nay vote of the Commissioners of St. Michaels.

**HAVING BEEN INTRODUCED**, read for the first time and ordered posted on the Town bulletin board at the Public Meeting of the Commissioners of St. Michaels held on this \_\_ day of \_\_\_\_\_, 2019, at 6 o'clock p.m., in the meeting room at the Edgar M. Bosley, Jr. Municipal Building (Town Office), St. Michaels, Maryland.

\_\_\_\_\_(SEAL)  
Jean R. Weisman  
Town Clerk\Manager

**HAVING BEEN READ** for the second time and passed by a ye and nay vote of The Commissioners of St. Michaels at a Public Hearing of The Commissioners of St. Michaels held on this \_\_ day of \_\_\_\_\_, 2019, at 6 o'clock p.m., in the meeting room at the Edgar M. Bosley, Jr. Municipal Building (Town Office), St. Michaels, Maryland.

Boos	-	_____
Bibb	-	_____
Harrod	-	_____
Winda	-	_____
Glackin	-	_____

I HEREBY CERTIFY that this Ordinance was passed by a yea and nay vote of The Commissioners of St. Michaels on the \_\_ day of \_\_\_\_\_, 2019 , and that the Exhibits attached hereto are true copies of the Exhibits referred to in this Ordinance.

ATTEST:

THE COMMISSIONERS OF ST. MICHAELS

\_\_\_\_\_  
Jean R. Weisman, Town Clerk\Manager

BY: \_\_\_\_\_ (SEAL)  
William E. Boos, President

I HEREBY CERTIFY that an exact copy of the above Ordinance was posted from the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at 8:30 o'clock a.m. to the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at 4:30 o'clock p.m., on the bulletin board at the Town Office in St. Michaels, Maryland, and that a summary of the above Ordinance, the date of its passage, its effective date and the fact that the entire text of the Ordinance may be read on the bulletin board of the Town Office, St. Michaels, Maryland, for at least twenty (20) days following the passage, has been published at least once each week for three (3) consecutive weeks following the passage of said Ordinance in a newspaper having general circulation in the Town of St. Michaels.

Date: \_\_\_\_\_, 2019

\_\_\_\_\_  
Jean R. Weisman, Town Clerk\Manager